

hospital, college, ~~the~~ university, ~~the~~ ~~Children's Justice Center,~~ or other instrumentality of the state[-];

and

(b) the Children's Justice Center.

(11) "Willful misconduct" means the intentional doing of a wrongful act, or the wrongful failure to act, without just cause or excuse, where the actor is aware that the actor's conduct will probably result in injury.

Section 2. Section **63G-7-202** is amended to read:

**63G-7-202. Act provisions not construed as admission or denial of liability -- Effect of waiver of immunity -- Exclusive remedy -- Joinder of employee -- Limitations on personal liability -- Public duty does not create specific duty.**

(1) (a) Nothing contained in this chapter, unless specifically provided, may be construed as an admission or denial of liability or responsibility by or for a governmental entity or its employees.

(b) If immunity from suit is waived by this chapter, consent to be sued is granted, and liability of the entity shall be determined as if the entity were a private person.

(c) No cause of action or basis of liability is created by any waiver of immunity in this chapter, nor may any provision of this chapter be construed as imposing strict liability or absolute liability.

(2) (a) Nothing in this chapter may be construed as adversely affecting any immunity from suit that a governmental entity or employee may otherwise assert under state or federal law.

(b) The attorney general representing the state in an action in federal court under this chapter may waive Eleventh Amendment immunity for the state.

(c) A private attorney representing the state in an action in federal court under this chapter may not waive Eleventh Amendment immunity for the state without the attorney general's written consent.

(3) (a) Except as provided in Subsection (3)(c), an action under this chapter against a governmental entity for an injury caused by an act or omission that occurs during the performance of an employee's duties, within the scope of employment, or under color of authority is a plaintiff's exclusive remedy.

(b) Judgment under this chapter against a governmental entity is a complete bar to any

276 special trust employee, unless:

277 (i) the institution proves that the special trust employee's behavior that otherwise would  
278 constitute a sexual battery was:

279 (A) with a subordinate student who was at least 18 years old at the time of the  
280 behavior; and

281 (B) with the student's consent; or

282 (ii) (A) at the time of the sexual battery, the higher education institution was subject to  
283 a policy governing behavior; and

284 (B) before the sexual battery occurred, the higher education institution had taken steps  
285 to implement and enforce the policy governing behavior.

286 ~~Ĥ→ [(5) A party to an action under this chapter may not waive immunity from suit and may~~  
287 ~~not be determined to have waived immunity from suit unless immunity from suit is waived~~  
288 ~~under a provision of this chapter.] ←Ĥ~~

289 Section 4. Section **63G-7-501** is amended to read:

290 **63G-7-501. Jurisdiction of district courts over actions.**

291 (1) The district courts have exclusive, original jurisdiction over any action brought  
292 under this chapter in state court.

293 (2) An action brought under this chapter may not be tried as a small claims action.